

**REMARKS**

Claims 39, 42-45 and 57-69 are pending in the present application. Claims 1-38, 40-41 and 46-56 have been cancelled. Claim 42 has been amended. Claims 39, 57, 61 and 66 are independent claims.

**Claim Rejections – 35 U.S.C. § 103**

Claims 39, 57, 61 and 66 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,848,217 to Tsukagoshi et al. ("Tsukagoshi") in view of U.S. Patent 7,174,560 to Crinon et al. ("Crinon").

According to the new Examination Guidelines for Determining Obviousness under 35 U.S.C. § 103 in view of the Supreme Court decision of *KSR International, Co. v. Teleflex, Inc.* it is stated that the proper analysis for a determination of obviousness is whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts. The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention would have been obvious. An Office Action must explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. See 72 Fed. Reg. 57526, 57528-529 (Oct. 10, 2007).

The Applicant respectfully asserts that neither Tsukagoshi nor Crinon, either separately or in combination, teach, suggest, or otherwise render obvious all of the limitations set forth in the claims. For example, independent claim 39 recites a method including among other things "the text-based data not including the program clock reference (PCR)." On page 3 of the Office Action the Examiner explicitly admits that Tsukagoshi does not teach the above quoted portion of claim 1.

The Examiner attempts to cure the insufficiency of Tsukagoshi by citing Crinon at col. 7, ln. 63 - col. 8, ln. 9 to allegedly teach the above quoted portion of claim 39.

The Applicant respectfully disagrees with the Examiner's allegation the Crinon teaches the above quoted portion of claim 39. Crinon at col. 7, ln. 63 - col. 8, ln. 10 states that "timing information is added to the transport video, audio, and data program elements to preserve the synchronization of various program elements lost in the multiplexing operation. A 27MHz. system clock 34 is sampled and the samples (program clock references or PCRs) are included in the transport data packets of the transport bit stream 16 (typically the transport data packets for the video element of the program) before transmission." Therefore, the cited portion of Crinon not only does not describe text based data not including a program clock reference as recited in independent claim 39, it explicitly describes adding timing information such as a PCR to the transported video, audio, and data program elements.

Therefore, not only does Crinon not cure the insufficiencies of Tsukagoshi in this matter, Crinon actually teaches away from the above quoted portion of claim 39. As is well established, teaching away is a well-known indicia of non-obviousness. See, for example, MPEP §2145X. D. 2. For at least these reasons, the Applicant respectfully asserts that neither Tsukagoshi nor Crinon whether separately or in combination teach suggest or otherwise render obvious all of the features set forth in independent claim 39 and a *prima facie* case of obviousness has not been made. The Applicant respectfully requests that the rejections under 35 U.S.C. 103(a) of independent claim 39 and its corresponding dependent claims be removed.

The Applicant notes that language similar to the above quoted text of independent claim 39 is also found in the other independent claims, claims 57, 61, and 66. Therefore, independent claims 57, 61, and 66 are also not rendered obvious by the combination of Tsukagoshi and Crinon for at least the same reasons set forth above with respect to independent claim 39. Therefore, the Applicant respectfully

requests that the rejections under 35 U.S.C. 103(a) of independent claims 57, 61, and 66 and their corresponding dependent claims be removed.

Claims 42-45, 58-60, 62-65, and 67-69 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsukagoshi and Crinon as applied to claims 39, 57, 61 and 66 and further in view of U.S. Patent Publication 2004/0081434 to Jung et al. ("Jung").

The Applicant notes that claims 42-45, 58-60, 62-65 and 67-69 are dependent upon one of the independent claims 39, 57, 61, or 66 described above. Because the independent claims are patentable over the cited references for the reasons set forth the Applicant respectfully asserts that dependent claims 42-45, 50-60, 62-65 and 67-69 are patentable at least by reason of their dependency and requests that the rejections under 35 U.S.C. 103(a) of these claims be removed.

#### **Request for Interview**

The Applicants respectfully request that the Examiner grant the Applicants' representative an interview before issuing a next action in the application. The Examiner is requested to contact the undersigned to schedule an interview.

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**CONCLUSION**

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 39, 42-45 and 57-69 in connection with the present application is earnestly solicited.

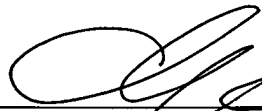
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By: \_\_\_\_\_



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